JAN 27 1954

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 472

UNITED RAILROAD OPERATING CRAFTS, A RAILROAD LABOR ORGANIZATION NATIONAL IN SCOPE, AND JOHN J. GALLAGHER, JR., HOWARD T. HUNT, CLIFFORD W. CARLSON AND ROBERT T. OWENS, INDIVIDUALLY AND ON BEHALF OF ALL MEMBERS OF THE PLAINTIFF RAILWAY ORGANIZATION AS A CLASS WHO ARE TOO NUMEROUS TO BE MADE PARTIES PLAINTIFFS,

Petitioners,

against

WILLIAM WYER, AS TRUSTEE OF THE LONG ISLAND RAILROAD COMPANY, A CORPORATION, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, AND BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

UNITED RAILROAD OPERATING CRAFTS, A RAILROAD LABOR ORGANIZATION NATIONAL IN SCOPE, AND ROBERT M. HARKINSON AND ARTHUR T. BESWICK, INDIVIDUALLY AND ON BEHALF OF ALL MEMBERS OF THE PLAINTIFF RAILWAY LABOR ORGANIZATION AS A CLASS WHO ARE TOO NUMEROUS TO BE MADE PARTIES PLAINTIFFS,

Petitioners,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

REPLY BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR CERTIORARI.

EDWARD J. FRUCHTMAN,
RICHARD F. WATT,
Counsel for Petitioners.

COTTON, FRUCHTMAN & WATT,
1943 Board of Trade Building,
Chicago 4, Illinois,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 472.

UNITED RAILROAD OPERATING CRAFTS, A RAILROAD LABOR ORGANIZATION NATIONAL IN SCOPE, AND JOHN J. GALLAGHER, JR., HOWARD T. HUNT, CLIFFORD W. CARLSON AND ROBERT T. OWENS, INDIVIDUALLY AND ON BEHALF OF ALL MEMBERS OF THE PLAINTIFF RAILWAY ORGANIZATION AS A CLASS WHO ARE TOO NUMEROUS TO BE MADE PARTIES PLAINTIFFS,

Petitioners,

against

WILLIAM WYER, AS TRUSTEE OF THE LONG ISLAND RAILROAD COMPANY, A CORPORATION, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, AND BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

UNITED RAILROAD OPERATING CRAFTS, A RAILROAD LABOR ORGANIZATION NATIONAL IN SCOPE, AND ROBERT M. HARKINSON AND ARTHUR T. BESWICK, INDIVIDUALLY AND ON BEHALF OF ALL MEMBERS OF THE PLAINTIFF RAILWAY LABOR ORGANIZATION AS A CLASS WHO ARE TOO NUMEROUS TO BE MADE PARTIES PLAINTIFFS,

Petitioners,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

REPLY BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR CERTIORARI.

I.

The briefs in opposition of the Brotherhood of Locomotive Engineers (BLE), Brotherhood of Locomotive Engine-

men and Firemen (BLF&E) and the Brotherhood of Railroad Trainmen (BRT) have so phrased their "Questions Presented" as to convey the impression that the issue before the Court is whether or not the National Railroad Adjustment Board has exclusive jurisdiction to settle disputes arising out of contracts. Thus the BRT poses the problem as whether the Adjustment Board has exclusive jurisdiction "to settle disputes between a carrier and its employees arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *" (BRT Brief, p. 3). The brief of the BLE and BLF&E similarly suggests that there is nothing more than a contract dispute involved (BLE, BLF&E Brief, p. 2).

This presentation of the issue begs the very question before the Court and assumes a conclusion which the petitioners do not dispute, namely, that the Adjustment Board does have jurisdiction over disputes involving the interpretation or application of a contract concerning working conditions.

The issue before the Court, however, is entirely different. Section 2 Eleventh authorizes union shop agreements which give operating railroad employees the option of complying with such agreements by joining either the contracting union or another union which is "national in scope." The quoted phrase is the language of Section 2 Eleventh and is incorporated verbatim in the union shop agreements to which respondents are parties. The individual petitioners claimed compliance with the union shop agreements by virtue of their membership in United Railroad Operating Crafts (UROC). Whether that membership constitutes compliance turns solely on the question whether UROC is "national in scope" as that phrase, taken verbatim from Section 2 Eleventh, is employed in the union shop agreements.

In short, then, the question before this Court is whether the meaning of the statutory language is for the courts to determine or whether respondents, by incorporating the statutory language into their contracts, have transformed a dispute as to the interpretation and application of the statute—a category of dispute which Section 3 First (i) plainly does not give the Adjustment Board power to resolve—into a dispute over "the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *" (45 U. S. C. Section 3 First (i))—a category of dispute which is for the Board to determine.

Thus respondents, by posing the "Question Presented" as involving no more than the Board's power to "settle disputes between a carrier and its employees arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules of working conditions * * *" (BRT Brief, p. 3), have begged the very question before this Court.

II.

Petitioners desire also to correct certain of the respondents' misconceptions with respect to the constitutional questions adverted to in the petitioners' brief. The BRT, the BLE and the BLF&E assert, in substance, that petitioners deliberately refrained from raising constitutional questions before the District Court and that they are therefore precluded from doing so now (BRT Brief, pp. 11-13; BLE, BLF&E Brief, pp. 7-10). This statement of what petitioners are allegedly seeking to accomplish, however, is inaccurate. As pointed out in the Petition, it is "the decision of the District Court" which "raises [the] serious constitutional problems" (Pet. p. 17) listed as Questions Nos. 7-10. Where the District Court's interpretation and application of the Railway Labor Act itself create constitutional issues, that fact alone is sufficient basis for this

Court's examination of those issues, even though, prior to decision by the District Court, petitioners had not attacked the constitutionality of the Act. Litigants who initially raise no constitutional questions cannot be precluded from calling such questions to this Court's attention when those questions are engendered by the lower court's ruling.

III.

In addition to this cause (No. 472), there is presently before this Court *United Railroad Operating Crafts, et al.* v. *Northern Pacific Railroad Company,* pending as Petition for Certiorari, No. 513. Because of the similarity of issues in these two cases, the Clerk of this Court has withheld distribution of briefs in No. 472 until all briefs in No. 513 have been received.

In this connection, the Court's attention is invited to two other cases involving substantially similar jurisdictional issues: *United Railroad Operating Crafts, et al.* v. *Pennsylvania Railroad Company, et al.* (C. A. 7, No. 10914); and *Piggott, et al.* v. *Detroit, Toledo & Ironton Railroad Company* (C. A. 6, No. 12143). In the *Pennsylvania Railroad* case, a Petition for Certiorari was filed in this court on January 25, 1954, before judgment in the Court of Appeals, and is pending as No. 548. Similarly, in the *Piggott* case, a Petition for Certiorari will be filed in this Court at the earliest possible moment, also before judgment in the Court of Appeals.

Respectfully submitted,

EDWARD J. FRUCHTMAN,
RICHARD F. WATT,
Counsel for Petitioners.

COTTON, FRUCHTMAN & WATT,
1943 Board of Trade Building,
Chicago 4, Illinois,
Of Counsel.